

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 2032

---

Introduced by Assembly Member Linder

February 16, 2016

---

An act to amend ~~Section 56770~~ Sections 56770, 56804, 56813, 56816, 57405, 57407, and 57412 of the Government Code, relating to local government.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2032, as amended, Linder. Change of organization: cities: disincorporation.

~~Existing~~

*(1) Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. The act prohibits the local area formation commission from approving or conditionally approving any proposal that includes a disincorporation of a city unless the commission determines, among other things, that the disincorporation is consistent with the intent of the act, the disincorporation will address necessary changes to spheres of influence of affected agencies, and the service responsibilities of the city proposed for disincorporation have been assigned.*

~~This bill would make a nonsubstantive change to this provision.~~

*This bill would additionally require the commission to determine that the proposed disincorporation is consistent with the intent that all debt and contractual obligations and responsibilities of the city being disincorporated be the responsibility of the same territory for repayment,*

*that existing and projected future revenues of the city to be disincorporated are sufficient to meet all expenditures, debts, and obligations of the former city, as specified, and that the appropriate appointing power of the successor or successors approves the terms of continuing employment or transfer of any employees from employment with the disincorporated city to employment with the successor or successors. By imposing new duties on local officials, this bill would impose a state-mandated local program.*

*(2) Existing law requires the executive officer of the commission to prepare a comprehensive fiscal analysis for any proposal that includes an incorporation, as specified. Existing law requires the comprehensive fiscal analysis to include, among other things, a review and documentation of specified costs associated with the proposed disincorporation.*

*This bill would require the comprehensive fiscal analysis to include an analysis of the former city's most recently completed financial statements audited by a certified public accountant, as specified. The bill would additionally require the executive officer to obtain written input from the successor or successors proposed to assume responsibility for the former city's operations during the preparation of the comprehensive fiscal analysis, as specified. The bill would additionally require the comprehensive fiscal analysis to include, among other things, a review and documentation of all debt obligations and current long-term liabilities of the city proposed for disincorporation and specified revenue sources. The bill would require the executive officer to provide the successor or successors at least 30 days to evaluate and validate the accuracy and sufficiency of the data used to prepare the comprehensive fiscal analysis. By imposing new duties on local officials, this bill would impose a state-mandated local program.*

*(3) Existing law requires the commission to determine the amount of property tax revenue to be exchanged by the affected city and any successor or affected local agency for a proposal that includes a disincorporation of a city and sets forth the procedures to be followed in making that determination.*

*This bill would revise these provisions to require the determination to be included in the comprehensive fiscal analysis, as specified.*

*(4) Existing law states the intent of the Legislature that a proposal that includes a disincorporation of a city result in a determination that the debt or contractual obligations and responsibilities of the city being disincorporated be the responsibility of the same territory for repayment.*

*Existing law requires the city being disincorporated to provide a written statement prior to issuance of a certificate for filing for a proposal that includes a disincorporation that includes specified information relating to its debts and contractual obligations.*

*This bill would additionally require that statement to include, among other things, the amount of money in the possession of custodians and trustees and an identification of whether any of the money is restricted, and a statement of whether there is any pending or potential litigation or claims against the city proposed to be disincorporated.*

*(5) Existing law requires the county tax collector to collect a tax that has been levied by the disincorporated city that remains uncollected.*

*This bill would additionally require the county tax collector to collect an assessment that has been levied by the disincorporated city that remains uncollected. By imposing new duties on local officials, this bill would impose a state-mandated local program.*

*(6) Existing law requires all money paid into the county treasury pursuant to provisions relating to the disincorporation of a city to be placed to the credit of a special fund established for the purpose of settling the affairs of the disincorporated city.*

*This bill would provide that the successor or successors to the disincorporated city are not liable to creditors of the former city, if at all, other than for those amounts actually paid into that special fund.*

*(7) Existing law requires the board of supervisors to provide for the collection of debts due to a city being disincorporated and to wind up its affairs, as specified.*

*This bill would instead require the governing board of the successor to the city being disincorporated to provide for the collection of debts due to the city and to wind up its affairs, as specified.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 56770 of the Government Code is amended to read:

56770. The commission shall not approve or conditionally approve a proposal that includes a disincorporation, unless, based on the entire record, the commission makes all of the following determinations:

(a) The proposed disincorporation is consistent with ~~the both~~ *of the following:*

(1) *The intent of this division to provide for a sustainable system for the delivery of services.*

(2) *The intent stated in Section 56816 that all debt and contractual obligations and responsibilities of the city being disincorporated shall be the responsibility of the same territory for repayment.*

(b) The commission has considered the service reviews of municipal services and spheres of influence of the affected local agencies, and the disincorporation will address the necessary changes to those spheres of influence, if any.

(c) It has reviewed the comprehensive fiscal analysis prepared pursuant to Section 56804.

(d) It has reviewed the executive officer's report and recommendation prepared pursuant to Section 56665, and the oral or written testimony presented at its public hearing.

~~(e)~~

*(e) Existing and projected future revenues of the city to be disincorporated are sufficient to meet all expenditures, debts, and obligations of the former city or, if there are not sufficient revenues, the tax rate upon which the commission conditions its approval for disincorporation shall be sufficient to meet all identified financial shortfalls of the former city.*

(f) The service responsibilities of the city proposed for disincorporation have been assigned through terms and conditions authorized by Sections 56885.5, 56886, and 57302, and Chapter 5 (commencing with Section 57400) of Part 5.

(g) *The appropriate appointing power of the successor or successors approves the terms of continuing employment or transfer of any employees from employment with the*

1 *disincorporated city to employment with the successor or*  
2 *successors.*

3 *SEC. 2. Section 56804 of the Government Code is amended to*  
4 *read:*

5 56804. (a) For any proposal that includes a disincorporation,  
6 the executive officer shall prepare, or cause to be prepared by  
7 contract, a comprehensive fiscal analysis *that includes an analysis*  
8 *of the former city's most recently completed financial statements*  
9 *audited by a certified public accountant and identifies any concerns*  
10 *raised by the certified public accountant. The executive officer*  
11 *shall obtain written input from the successor or successors or the*  
12 *petitioners proposed to assume responsibility for the former city's*  
13 *operations during the preparation of the comprehensive fiscal*  
14 *analysis to assist in determining whether revenue shortfalls, if any,*  
15 *will leave unfunded debts or liabilities after disincorporation.* This  
16 analysis shall become part of the report required pursuant to Section  
17 56665. Data used for the analysis shall be from the most recent  
18 fiscal year for which data is available, preceding the issuances of  
19 the certificate of filing. When data requested by the executive  
20 officer in the notice to affected agencies, pursuant to paragraph  
21 (2) of subdivision (b) of Section 56658, is unavailable, the analysis  
22 shall document the source and methodology of the data used. The  
23 analysis shall review and document each of the following:

24 ~~(a)~~

25 (1) The direct and indirect costs incurred by the city proposed  
26 for disincorporation for providing public services during the three  
27 fiscal years immediately preceding the submittal of the proposal  
28 for disincorporation.

29 ~~(b)~~

30 (2) The direct and indirect costs incurred by the city proposed  
31 for disincorporation for current and proposed capital improvements,  
32 facilities, assets, and infrastructure.

33 ~~(c)~~

34 (3) The sources of funding, if any, available to the entities  
35 proposed to assume the obligations of the city proposed for  
36 disincorporation.

37 ~~(d)~~

38 (4) The anticipated costs, including all direct and indirect costs,  
39 to the entities proposed to assume the obligations of the city

1 proposed for disincorporation in the provision of services to the  
2 area proposed for disincorporation.

3 ~~(e)~~

4 (5) When determining costs, the executive officer shall also  
5 include all direct and indirect costs of any public services that are  
6 proposed to be transferred to state agencies for delivery.

7 ~~(f)~~

8 (6) The revenues of the city proposed for disincorporation during  
9 the three fiscal years immediately preceding the initiation of the  
10 disincorporation proposal.

11 *(7) All debt obligations and current and long-term liabilities of*  
12 *the city proposed for disincorporation, including the balance of*  
13 *restricted and unrestricted funds available to extinguish the*  
14 *obligations and liabilities.*

15 *(8) The required financing mechanism(s) to address any*  
16 *shortfalls and obligations for those responsibilities identified in*  
17 *this section, including, but not limited to, taxes or assessments.*

18 *(9) A determination of the proportion that the amount of*  
19 *property tax revenue derived by the city being disincorporated*  
20 *pursuant to subdivision (b) of Section 93 of the Revenue and*  
21 *Taxation Code bears to the total amount of revenue from all*  
22 *sources available for general purposes received by the city being*  
23 *disincorporated in the prior fiscal year. For purposes of making*  
24 *this determination and the determination required by paragraph*  
25 *(3) of subdivision (c) of Section 56813, "total amount of revenue*  
26 *from all sources available for general purposes" means the total*  
27 *amount of revenue that the city being disincorporated may use on*  
28 *a discretionary basis for any purpose and does not include any of*  
29 *the following:*

30 *(A) Revenue that, by statute or ordinance, is required to be used*  
31 *for a specific purpose.*

32 *(B) Revenue from fees, charges, or assessments that are levied*  
33 *to specifically offset the cost of particular services and that do not*  
34 *exceed the cost reasonably borne in providing these services.*

35 *(C) Revenue received from the federal government that is*  
36 *required to be used for a specific purpose.*

37 ~~(g)~~

38 (10) Any other information and analysis needed to make the  
39 findings required by Section 56770.

1     (b) *The executive officer shall provide the successor or*  
2     *successors at least 30 days to review, evaluate, and validate the*  
3     *accuracy and sufficiency of the data used to prepare the*  
4     *comprehensive fiscal analysis.*

5     SEC. 3. *Section 56813 of the Government Code is amended to*  
6     *read:*

7     56813. (a) If the proposal includes the disincorporation of a  
8     city, as defined in Section 56034, the commission shall determine  
9     the amount of property tax revenue to be exchanged by the affected  
10    city and any successor or affected local agency pursuant to this  
11    section.

12    (b) The commission shall notify the county auditor of the  
13    proposal, the affected local agencies to be extinguished, and the  
14    services proposed to be transferred to new jurisdictions, and  
15    identify for the auditor the changes to occur.

16    ~~(c) If the proposal would not transfer all of the service~~  
17    ~~responsibilities of the disincorporating city to the affected county~~  
18    ~~or to a single affected agency, the commission and the county~~  
19    ~~auditor shall do all of the following:~~

20    ~~(1) The county auditor shall determine the proportion that the~~  
21    ~~amount of property tax revenue derived by the city being~~  
22    ~~disincorporated pursuant to subdivision (b) of Section 93 of the~~  
23    ~~Revenue and Taxation Code bears to the total amount of revenue~~  
24    ~~from all sources, available for general purposes, received by the~~  
25    ~~city being disincorporated in the prior fiscal year and provide his~~  
26    ~~or her response within 15 days of receiving notification from the~~  
27    ~~commission pursuant to subdivision (b). For purposes of making~~  
28    ~~this determination and the determination required by paragraph~~  
29    ~~(3), "total amount of revenue from all sources available for general~~  
30    ~~purposes" means the total amount of revenue which the city being~~  
31    ~~disincorporated may use on a discretionary basis for any purpose~~  
32    ~~and does not include any of the following:~~

33    ~~(A) Revenue that, by statute or ordinance, is required to be used~~  
34    ~~for a specific purpose.~~

35    ~~(B) Revenue from fees, charges, or assessments that are levied~~  
36    ~~to specifically offset the cost of particular services and that do not~~  
37    ~~exceed the cost reasonably borne in providing these services.~~

38    ~~(C) Revenue received from the federal government that is~~  
39    ~~required to be used for a specific purpose.~~

40    (2)

(c) The commission shall determine, based on information submitted *certified* by the governing body of the city being disincorporated, an amount equal to the total net cost to that city during the prior fiscal year of providing those services that an affected agency will assume within the area subject to the proposal. For purposes of this paragraph, “total net cost” means the total direct and indirect costs that were funded by general purpose revenues of the city being disincorporated and excludes any portion of the total cost that was funded by any revenues of that agency that are specified in subparagraphs (A), (B), and (C) of ~~paragraph (1)~~ *paragraph (9) of subdivision (a) of Section 56804*.

~~(3)~~  
(d) For the services to be transferred to each affected local agency, the commission shall multiply the amount determined pursuant to ~~paragraph (2)~~ *subdivision (c)* by the proportion determined pursuant to ~~paragraph (1)~~ *paragraph (9) of subdivision (a) of Section 56804* to derive the amount of property tax revenue used to provide services by the city being disincorporated during the prior fiscal year within the area subject to the proposal. The county auditor shall adjust the amount so determined by the annual tax increment pursuant to the procedures set forth in Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code, to the fiscal year in which the affected agency receives its next allocation of property taxes.

~~(d)~~  
(e) If the proposal for disincorporation would transfer all of the service responsibilities of the city proposed for disincorporation, other than those that are proposed to be discontinued, to a single successor, the commission shall request the auditor to determine the property tax revenue allocated to the city being disincorporated by tax rate area, or portion thereof, and transmit that information to the commission.

~~(e)~~  
(f) The executive officer shall notify the auditor of the amount determined pursuant to *paragraph (9) of subdivision (e) or (d); (a) of Section 56804 or of subdivision (e) of this section*, as the case may be, and, where applicable, the period of time within which and the procedure by which the transfer of property tax revenues will be effected pursuant to this section, at the time the executive officer records a certificate of completion pursuant to Section



57203 for any proposal described in subdivision (a), and the auditor shall transfer that amount to the affected agency or agencies that will assume the services as determined by the commission. Any property tax not transferred to an affected agency pursuant to *paragraph (9) of subdivision (e) (a) of Section 56804* shall be transferred to the affected county.

~~(f)~~

(g) For purposes of this section, “prior fiscal year” means the most recent fiscal year preceding the issuance of the certificate of filing for which data is available on actual direct and indirect costs and revenues needed to perform the calculations required by this section.

~~(g)~~

(h) Any action brought by a city, county, or district to contest any of the determinations of the county auditor or the commission with regard to the amount of property tax revenue to be exchanged by the affected local agencies pursuant to this section shall be commenced within three years of the effective date of the disincorporation.

*SEC. 4. Section 56816 of the Government Code is amended to read:*

56816. (a) It is the intent of the Legislature that any proposal that includes the disincorporation of a city result in a determination that the debt or contractual obligations and responsibilities of the city being disincorporated shall be the responsibility of that same territory for repayment. To ascertain this information, the city shall provide a written statement that *is certified by its legislative body and determines and certifies* all of the following to the commission prior to the issuance of a certificate of filing for a disincorporation proposal, pursuant to Sections 56651 and 56658:

(1) The indebtedness of the city.

(2) The amount of money in the city’s treasury, *including an identification of any money that is restricted.*

(3) *The amount of money in the possession of custodians and trustees and an identification of any money that is restricted.*

~~(3)~~

(4) The amount of any tax ~~levy~~ *levy, direct assessment*, or other obligation due the city that is unpaid or has not been collected.

(5) *Current and long-term receivables owed to the city.*

1 (6) *A statement of whether there are any pending or potential*  
2 *litigation or claims against the city, including potential liability.*

3 ~~(4)~~

4 (7) The amount of current and future liabilities, both internal  
5 debt owed to other special or restricted funds or enterprise funds  
6 within the agency and external debt owed to other public agencies  
7 or outside lenders or that results from contractual obligations,  
8 which may include contracts for goods or services, retirement  
9 obligations, actuarially determined unfunded pension liability of  
10 all classes in a public retirement system, including any  
11 documentation related to the termination of public retirement  
12 contract provisions, and the liability for other postemployment  
13 benefits. The information required by this paragraph shall include  
14 any associated revenue stream for financing that may be or has  
15 been committed to that liability, including employee contributions.

16 (8) *The annual amount of voter-approved pensions levied by*  
17 *the city and a determination of unfunded pension tax liability owed*  
18 *to the California Public Employees' Retirement System.*

19 ~~(b) The city shall provide a written statement identifying the~~  
20 ~~successor agency to the city's former redevelopment agency, if~~  
21 ~~any, shall be determined pursuant to Section 34173 of the Health~~  
22 ~~and Safety Code.~~

23 SEC. 5. *Section 57405 of the Government Code is amended to*  
24 *read:*

25 57405. If a tax or assessment has been levied by the  
26 disincorporated city and remains uncollected, the county tax  
27 collector shall collect it when due and pay it into the county  
28 treasury on behalf of the designated successor agency or county  
29 to wind up the affairs of the disincorporated city.

30 SEC. 6. *Section 57407 of the Government Code is amended to*  
31 *read:*

32 57407. (a) All money paid into the county treasury pursuant  
33 to this chapter shall be placed to the credit of a special fund  
34 established for the purpose of settling the affairs of the  
35 disincorporated city.

36 (b) *The successor or successors to the disincorporated city shall*  
37 *not be liable to creditors of the former city, if at all, other than for*  
38 *those amounts actually paid into the special fund established*  
39 *pursuant to subdivision (a). For purposes of this section, creditors*

1 *include, but are not limited to, employees and bondholders of the*  
2 *disincorporated city.*

3 *SEC. 7. Section 57412 of the Government Code is amended to*  
4 *read:*

5 *57412. The ~~board of supervisors~~ governing body of the*  
6 *successor shall provide for collection of debts due the city and*  
7 *wind up its affairs. Upon an order by the ~~board of supervisors,~~*  
8 *commission, the appropriate ~~county~~ officer of the successor shall*  
9 *perform any act necessary for winding up the city affairs, with the*  
10 *same effect as if it had been performed by the proper city officer.*

11 *SEC. 8. If the Commission on State Mandates determines that*  
12 *this act contains costs mandated by the state, reimbursement to*  
13 *local agencies and school districts for those costs shall be made*  
14 *pursuant to Part 7 (commencing with Section 17500) of Division*  
15 *4 of Title 2 of the Government Code.*